CF 10L (4) Single Bench

(1)

~~CF 2007~~

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION [S] NO. 5508 /2006 [S.B]

PETITIONERS :- 1] Santuram Yadav S/o Kangluram Yadav, aged about 39 years, resident of village Berla, Post Berla, District Durg [C..G.].

2] Santosh Kumar Yadav son of Gokul Yadav, aged about 35 years, Resident of village Thankhamria, Post Saja, District Durg [C.G.].

5408/06 MK Bhaduri 23/9/06

P.I. Pre dated

APPLICANTS IN LABOUR COURT

VERSUS

RESPONDENTS :- 1] The Secretary, Krishi Upaj Mandi Samiti, Bemetara, District Durg [C.G.].

2] The Chairman/President Krishi Upaj Mandi Samiti, Bemetara, District Durg [C.G.].

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P.(S) No. 5508 of 2006

Petitioners : Santuram Yadav & another

Versus

Respondents : State of Chhattisgarh & Others

Shri Malay Kumar Bhaduri, counsel for the petitioner.

ORDER

(2nd November, 2006)

1. In the present writ petition, the petitioners have impugned the award dated 8.8.2006 (Annexure P/1) passed by the Labour Court, Durg under I.D. Act in Case No. 56/I.D.Act/Reference/2005, whereby the Labour Court, Durg dismissed the claim of the petitioners for reinstatement in the service with wages.

2. The facts in nutshell are that the dispute arose between the petitioners and the employer, which was raised before the Deputy Labour Commissioner, Raipur. The Deputy Labour Commissioner, Raipur referred the dispute to the Labour Court, Durg. The parties submitted their claim, counter claim and reply before the Labour Court. The Labour Court, by order dated 8.8.2006 (Annexure P/1), came to the conclusion that the employees/petitioners have failed to prove that the petitioners have worked for more than 240 days in the preceding year, as admittedly the petitioners were temporary employees and their services were on daily wages basis.

3. I have heard learned counsel for the petitioner and perused the petition and documents appended thereto. It is apparent that the petitioners have not produced any documents, except their bald statement that they have worked for more than 240 days. Since, the petitioners were employed on daily wages basis, no notice was required to be given to the petitioners, as they were employed on the availability of work.

4. The supreme Court in the case of **Range Forest Officer Vs. S.T. Hadimani**[1], held in paragraphs 2 and 3, as under

> "2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10-8-1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.
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> 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an 'industry' or not, though reliance is placed on the decision of this Court in State of Gujrat v. Pratamsingh Narsingh Parmar[4]. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year

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preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde, appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

Which was later on followed by the Supreme Court in the case of **Batala Coop. Sugar Mills Ltd. v. Sowaran Singh**[2].

5. Admittedly, the appointment of the petitioners was not in accordance with the constitutional scheme and they were appointed as daily wages workers.

6. The Division Bench of the Supreme Court in the case of **Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others**[3] held that the employees appointed/recruited de-hors the constitutional scheme and continued for long in public employment, are not entitled to continuation and regularization. It was later on followed by the Supreme Court in several decisions i.e. **Mineral Exploration Corporation Employees' Union v. Mineral Exploration Corporation**

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Limited & Anr.[4], Principal, Mehar Chand Polytechnic and Another Vs. Anu Lamba and others[5].

7. In the facts of the present case when admittedly, the appointments of the petitioners were on daily wages basis and the petitioners have not completed 240 days in one calendar year which is the condition precedent for attracting the provisions of Section 25-F of the Industrial Disputes Act, 1947. The impugned order passed by the Labour Court needs no interference.

8. The writ petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

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[1]{(2002) 3 SCC 25}
[2]{(2005) 8 SCC 481}
[3]{(2006) 4 SCC 1}
[4]{(2006) 6 SCC 310}
[5]{(2006) 7 SCC 161}

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